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EXAMINER				
NEGRON, ISMAEL				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,885

**Applicant(s)**

GRIFFITHS ET AL.

**Examiner**

ISMAEL NEGRON

**Art Unit**

2885

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 49-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-74 is/are rejected.
- 7) ☒ Claim(s) 65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. Applicant's amendment filed July 4, 2008 has been entered. Claims 49, 58 and 65 have been amended. No claim has been cancelled. Claims 69-74 have been added. Claims 49-74 are still pending in this application, with claims 49, 58 and 65 being independent.

3. The drawings were received on October 29, 2007. These drawings are not acceptable. See section 4, below

### ***Specification***

4. The amendment filed October 29, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: newly presented

Figures 5 and 6 now include a label attached to the base/bottom surface of the container.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

5. Claim 65 is objected to because of the following informalities: it defines the label as being affixed to itself (i.e. the label being affixed to the label, see lines 6 and 7).

The cited lack of informalities do not amount to indefiniteness under 35 U.S.C. 112, second paragraph, since it is readily apparent that applicant meant to define the label as being affixed to a bottom external surface of the portable container. However, appropriate correction is required to place the claims in proper form for allowance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 49-74 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Newly amended claim 49 recites the label as being attached to the bottom surface of the bottle; however, such structural limitations were not disclosed in the specification as originally filed. Newly amended claims 58 and 65 are rejected for the same reasons as claim 49.

8. Claims 50-57, 59-64 and 66-74 are rejected for their dependency on rejected independent claims 49, 58 or 65.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 49, 50, 53, 54, 56, 57, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829).

10. POLICAPELLI discloses an illuminated container having:

- **a bottle for fluid contents fabricated from a light-transmitting material (as recited in Claim 49), Figure 1, reference number 10;**

- **the bottle having an external indentation (as recited in Claim 49), Figure 1A, reference number 13;**
- **the indentation containing a circuit device (as recited in Claim 49), Figure 1A, reference number 14;**
- **the circuit device including a power source (as recited in Claim 49), Figure 1A, reference number 18;**
- **the circuit device including a light-emitter (as recited in Claim 49), Figure 1A, reference number 19;**
- **the light emitter being located on the side of the circuit device adjacent to the container (as recited in Claim 49), as seen in Figure 1A;**
- **the bottle further including an externally-actuable electrical switching arrangement (as recited in Claim 49), Figure 1A, reference number 21;**
- **the switching arrangement being included in the circuit device for connecting the power source to the light-emitter (as recited in Claim 49), as seen in Figure 1A;**
- **the switching arrangement being of a type which is arranged to be actuated only once from OFF to ON (as recited in Claim 49), as evidenced by paragraph 0024;**
- **the light-emitter being arranged, upon actuation of said switching arrangement from OFF to ON, to illuminate the**

- contents of the bottle (as recited in Claim 49), as evidenced by paragraph 0024;**
- **the bottle including a label (as recited in Claim 49), paragraph 0042;**
  - **the switching arrangement being arranged to be actuated independently of opening the bottle and independently of moving the bottle (as recited in Claim 50), as evidenced by paragraph 0024;**
  - **the switching arrangement being capable of being actuated magnetically (as recited in Claim 53), as evidenced by Figure 1A;**
  - **the light-emitter being arranged, upon actuation of said switching arrangement from OFF to ON, to illuminate the contents of the bottle until the power source is exhausted (as recited in Claim 54), as evidenced by paragraph 0024;**
  - **the power source being a battery of substantially flat shape (as recited in Claim 56), as seen in Figure 1A;**
  - **the light-emitter including a light-emitting diode of substantially flat shape (as recited in Claim 57), as seen in Figure 1A; and**
  - **the light emitter being oriented to emit light away from the label (as recited in Claim 69), as evidenced by Figure 1A.**

11. POLICAPELLI discloses all the limitations of the claims, except the circuit device being attached to a back surface of the label (as recited in Claim 49), a label attached to the bottom surface of the bottle (as recited in Claim 49), or the circuit device being only affixed to the bottle by the label (as recited in Claim 70).

12. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to position the label over the patented circuit device of POLICAPELLI (as recited in Claim 49) to hide such device from view. In addition, it is noted that it is not only old and well known in the art, but a standard practice, to position labels over the location disclosed by POLICAPELLI for the patented circuit device. It would have been further obvious to one of ordinary skill in the art at the time the claimed invention was made to position a label bottom surface of the bottle (as recited in Claim 49) to provide an advertising message when such bottom surface is visible (e.g. when the bottle is raised to drink from it).

13. Regarding the circuit device being only affixed to the bottle by the label (as recited in Claim 70), it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the label to secured the circuit device to the bottle to simplify attachment of the circuit device to such bottle and/or to enable the circuit device to be attached to regular bottles.



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14. Claims 51, 52 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829) in view of CARSON (U.S. Pat. 6,254,247).

15. POLICAPELLI discloses, or at least suggests, all the limitations of the claims (as detailed in previous sections 10-13), except:

- the container further including an insulating tab (as recited in Claim 51);
- the switching arrangement being activated by removal of the insulating tab (as recited in Claim 51);
- the bottle having a closure element (as recited in Claim 52)
- the location of the tab being spaced from the closure element (as recited in Claim 52); or
- the light-emitter being arranged, upon actuation of said switching arrangement from OFF to ON, to illuminate the contents of the bottle for about 15 to 20 minutes (as recited in Claim 55).

16. CARSON discloses an illuminated container having:

- **a bottle for fluid contents fabricated from a light-transmitting material (as recited in Claim 49)**, Figure 1, reference number 12;
- **a circuit device (as recited in Claim 49)**, Figure 1, reference number 62;

- **the circuit device including a power source (as recited in Claim 49), Figure 1, reference number 74;**
- **the circuit device including a light-emitter (as recited in Claim 49), Figure 1, reference number 64;**
- **the bottle further including an externally-actuable electrical switching arrangement (as recited in Claim 49), Figure 1, reference number 76;**
- **the container further including an insulating tab (as recited in Claim 51), Figure 1, reference number 78;**
- **the switching arrangement being activated by removal of the insulating tab (as recited in Claim 51), columns 4 and 5, lines 62-67 and 1-3, respectively;**
- **the bottle having a closure element (as recited in Claim 52), Figure 1, reference number 30;**
- **the location of the tab being spaced from the closure element (as recited in Claim 52), as seen in Figure 1; and**
- **the light-emitter being arranged, upon actuation of said switching arrangement from OFF to ON, to illuminate the contents of the bottle for about 15 to 20 minutes (as recited in Claim 55), column 4, lines 42-44.**

17. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the switching arrangement of CARSON in the patented device of POLICAPELLI, to prevent such device from being accidentally energized prior to delivery to an end user, and to preserve the power source by powering the illumination device by a prescribed period of time, as per the teachings of CARSON.

18. Claims 58-60, 63, 64, 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829).

19. POLICAPELLI discloses a portable container having:

- **a light-emitter (as recited in Claim 58)**, Figure 1A, reference number 19;
- **an event-detecting arrangement (as recited in Claim 58)**, Figure 1A, reference number 21;
- **a self-contained power source (as recited in Claim 58)**, Figure 1A, reference number 18;
- **a connector being for connecting the light-emitter with the event-detecting arrangement and the power source (as recited in Claim 58)**, as required for operation;

- **light being emitted by the light-emitter on detection of one or more predetermined events by the event-detecting arrangement (as recited in Claim 58), paragraph 0024;**
- **the container being at least partially fabricated from a material able to transmit light (as recited in Claim 58), as evidenced by Figure 1A;**
- **the light-emitter being arranged to be able to illuminate the contents of the container (as recited in Claim 58), as evidenced by Figure 1A;**
- **the bottle including a label (as recited in Claim 58), paragraph 0042;**
- **the contents being illuminated substantially uniformly (as recited in Claim 59), as evidenced by Figure 1A;**
- **the container being arranged in normal use such that after detection of an event, light is emitted until the power source is exhausted (as recited in Claim 60), as evidenced by paragraph 0024;**
- **the light-emitter includes at least one light-emitting diode (as recited in Claim 63), Figure 1A, reference number 19;**
- **the light-emitter and the power source being located in an indentation external to the container (as recited in Claim 64), as seen in Figure 1A; and**

- **the light emitter being oriented to emit light away from the label (as recited in Claim 71),** as evidenced by Figure 1A.

20. POLICAPELLI discloses all the limitations of the claims, except the circuit device being attached to a back surface of the label (as recited in Claim 58), a label attached to the bottom surface of the bottle (as recited in Claim 58), or the circuit device being only affixed to the bottle by the label (as recited in Claim 72).

21. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to position the label over the patented circuit device of POLICAPELLI to hide such device from view. In addition, it is noted that it is not only old and well known in the art, but a standard practice, to position labels over the location disclosed by POLICAPELLI for the patented circuit device. It would have been further obvious to one of ordinary skill in the art at the time the claimed invention was made to position a label bottom surface of the bottle (as recited in Claim 58) to provide an advertising message when such bottom surface is visible (e.g. when the bottle is raised to drink from it).

22. Regarding the circuit device being only affixed to the bottle by the label (as recited in Claim 70), it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the label to secured the circuit device to the bottle to simplify attachment of the circuit device to such bottle and/or to enable the circuit device to be attached to regular bottles.

23. Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829) in view of CARSON (U.S. Pat. 6,254,247).

24. POLICAPELLI discloses, or at least suggests, all the limitations of the claims (as detailed in previous sections 19-22), except:

- the activating event including the opening of the container (as recited in Claim 61); or
- the container including a removable insulating tab (as recited in Claim 62).

25. CARSON discloses a portable container having:

- **a light-emitter (as recited in Claim 58)**, Figure 1, reference number 64;
- **an event-detecting arrangement (as recited in Claim 58)**, Figure 1, reference number 76;
- **a self-contained power source (as recited in Claim 58)**, Figure 1, reference number 74;
- **light being emitted by the light-emitter on detection of one or more predetermined events by the event-detecting arrangement (as recited in Claim 58)**, columns 4 and 5, lines 62-67 and 1-3, respectively;

- **the container being arranged in normal use such that after detection of an event, light is emitted until the power source is exhausted (as recited in Claim 60),** columns 4 and 5, lines 62-67 and 1-3, respectively;
- **the activating event including the opening of the container (as recited in Claim 61),** column 5, lines 8-11; and
- **the container including a removable insulating tab (as recited in Claim 62),** Figure 1, reference number 78.

26. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the switching arrangement of CARSON in the patented device of POLICAPELLI, to prevent such device from being accidentally energized prior to delivery to an end user, and to activate the illumination device automatically upon the container being opened, as per the teachings of CARSON.

27. Claims 65-68, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829) in view of CARSON (U.S. Pat. 6,254,247).

28. POLICAPELLI discloses a portable container having:

- **an output signal emitter (as recited in Claim 65),** Figure 1A, reference number 19;

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- **a self-contained power source for the signal emitter (as recited in Claim 65), Figure 1A, reference number 18;**
- **the power source being connected to the signal emitter by a connection including a switch (as recited in Claim 65), Figure 1A, reference number 21;**
- **the container having a closure element (as recited in claims 66 and 67), as evidenced by Figure 1A;**
- **the output signal being light (as recited in Claim 68), as evidenced by paragraph 0024;**
- **the container being at least partially fabricated from a material able to transmit light (as recited in Claim 68), as evidenced by Figure 1A;**
- **the output signal emitter being arranged to illuminate any contents within the interior of the container (as recited in Claim 68), as evidenced by Figure 1A; and**
- **the light emitter being oriented to emit light away from the label (as recited in Claim 73), as evidenced by Figure 1A.**

29. POLICAPELLI discloses, or at least suggests, all the limitations of the claims, except:

- **the switch being arranged to be maintained open by a removable insulating tab (as recited in Claim 65);**



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- the arrangement being such that, on removal of the insulating tab, the switch closes and an output signal is emitted (as recited in Claim 65);
- the tab being located at or in the closure element of the container (as recited in Claim 66); or
- the location of the tab on the container being spaced from the closure element of the container (as recited in Claim 67);
- a label attached to a bottom external surface of the bottle (as recited in Claim 65); or
- the circuit device being only affixed to the bottle by the label (as recited in Claim 74).

30. CARSON discloses a portable container having:

- **an output signal emitter (as recited in Claim 65),** Figure 1, reference number 64;
- **a self-contained power source for the signal emitter (as recited in Claim 65),** Figure 1, reference number 74;
- **the power source being connected to the signal emitter by a connection including a switch which is arranged to be maintained open by a removable insulating tab (as recited in Claim 65),** Figure 1, reference number 78;
- **the arrangement being such that, on removal of the insulating tab, the switch closes and an output signal is emitted (as**

**recited in Claim 65)**, columns 4 and 5, lines 62-67 and 1-3, respectively;

- **the container having a closure element (as recited in claims 66 and 67)**, Figure 1, reference number 30;
- **the tab being located at or in the closure element of the container (as recited in Claim 66)**, as evidenced by column 5, lines 8-11;
- **the location of the tab on the container being spaced from the closure element of the container (as recited in Claim 67)**, as seen in Figure 1; and
- **the output signal being light (as recited in Claim 68)**, column 3, lines 37-39.

31. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the switching arrangement of CARSON in the patented device of POLICAPELLI, to prevent such device from being accidentally energized prior to delivery to an end user, as per the teachings of CARSON. It would have been further obvious to one of ordinary skill in the art at the time the claimed invention was made to position a label bottom surface of the bottle (as recited in Claim 49) to provide an advertising message when such bottom surface is visible (e.g. when the bottle is raised to drink from it).

32. Regarding the circuit device being only affixed to the bottle by the label (as recited in Claim 74), it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the label to secured the circuit device to the bottle to simplify attachment of the circuit device to such bottle and/or to enable the circuit device to be attached to regular bottles.

### ***Response to Arguments***

33. Applicant's arguments filed July 4, 2008 have been fully considered but they are not persuasive.

34. Applicant's arguments with respect to claims 49, 58 and 65 have been considered but are moot in view of the new ground(s) of rejection, as detailed in the previous sections.

35. Regarding the Examiner's objection under 35 U.S.C. 132(a), to the amendment filed October 29, 2007 as introducing new matter into the disclosure, the applicant argues that the cited amendments are fully supported by the original disclosure, for example, in pages 19 and 22 (lines 13-15 and 17-19, respectively).

36. In response to applicant's arguments that the original disclosure fully supports "a label attached to the bottom of a bottle, the circuit device being attached to such label, it is noted that the passages cited by the applicant to support the cited "label" merely

disclose the circuit device positioned on the bottom surface of the bottle, not the circuit-device-carrying label. In fact, the applicant admits that the circuit device is positioned separated from the label (see page 19, lines 13-18). Nowhere in the specification as originally filed is a label including a circuit device explicitly, implicitly or inherently, disclosed as being attached to a bottom surface of a bottle.

37. Regarding the Examiner's rejection of claim 53 under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829), the applicant argues that the cited reference fails to disclose all the features of the claimed invention, specifically magnetic actuation of the switch.

38. In response to applicant's arguments that POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829) failed to disclose individually, or even suggest, a switching arrangement capable of being actuated magnetically, the applicant is advised that it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case, the switching arrangement of the device of POLICAPELLI was considered to meet the cited limitation, as any switching arrangement is capable of being actuated magnetically if provided with an appropriate switch (e.g. Reed or Hall effect switches).

39. Regarding the Examiner's rejection of claim 66 under 35 U.S.C. 103(a) as being unpatentable over POLICAPELLI (U.S. Pat. App. Pub. 2004/0004829) in view of CARSON (U.S. Pat. 6,254,247), the applicant argues that the cited references fails to disclose individually, or even suggest in combination, all the features of the claimed invention, specifically an insulating tab being removed by removal of the cap.

40. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., removal of the bottle cap removing the insulating tab) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, the cap of CARSON was considered equivalent to the claimed insulating tab, as such cap open and closes the switch controlling the signal emitter, as recited in the claims.

### ***Conclusion***

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negron whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jong-Suk (James) Lee, can be reached on (571) 272-7044. The facsimile machine number for the Art Group is (571) 273-8300.

42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.

/Ismael Negron/  
Examiner  
AU 2885